

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

**ROBERT BENAVIDES and
MELISSA GAONA BENAVIDES,**

Plaintiffs,

V.

STATE FARM LLOYDS,

Defendant

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CIVIL ACTION NO.

5:15-cv-00163

JURY REQUESTED

STATE FARM LLOYDS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES State Farm Lloyds and files this Notice of Removal pursuant to 28 U.S.C. § 1446(a) (2015). In support hereof, State Farm Lloyds would respectfully show the Court as follows:

BRIEF STATEMENT OF NOTICE

1. This is a civil action dispute between Plaintiffs Robert Benavides and Melissa Gaona Benavides (jointly and severally, "Plaintiffs") and State Farm Lloyds concerning an insurance claim for alleged damage to Plaintiffs' property in Webb County, Texas, purportedly caused by a storm that happened on or about May 9, 2014. Plaintiffs are citizens of the State of Texas and State Farm Lloyds is an unincorporated insurance association whose underwriters are all citizens of states other than Texas¹. Accordingly, because there is complete diversity of citizenship between Plaintiffs on

¹ For purposes of ascertaining diversity jurisdiction, an unincorporated insurance association is considered to have the citizenship of its underwriters. See *Royal Insurance Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-883 (5th Cir. 1993), cert. denied, 511 U.S. 1032 (1994).

the one hand and State Farm Lloyds on the other, and because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, jurisdiction is correctly vested in this Court. See *Burden v. General Dynamics Corp.*, 60 F.3d 213, 220-221 (5th Cir. 1995).

PROCEDURAL BACKGROUND

2. On June 17, 2015, Plaintiffs filed the Original Petition and Request for Disclosure (“Original Petition”) in Cause No. 2015CVF002114 D4, styled *Robert Benavides and Melissa Gaona Benavides v. State Farm Lloyds*, in the 406th Judicial District Court, Webb County, Texas. State Farm Lloyds was served with Plaintiffs’ Original Petition and citation on July 17, 2015.

3. This Notice of Removal is filed by State Farm Lloyds within thirty (30) days after the date on which State Farm Lloyds was served with Plaintiffs’ Original Petition and citation. It is therefore timely under 28 U.S.C. § 1446(b) (2015).

NATURE OF THE ACTION

4. This action involves^e a dispute over an insurance claim reported by Plaintiffs under a homeowners insurance contract for alleged damage to Plaintiffs’ property in Webb County, Texas, purportedly caused by a storm that happened on or about May 9, 2014. In the Original Petition, Plaintiffs state that they “are seeking monetary relief over \$200,000 but not more than \$1,000,000.” Plaintiffs specifically contend that they “are entitled to [‘three times their’] actual damages, which include the loss of the benefits that should have been paid pursuant to the [applicable insurance] policy, mental anguish, court costs, and attorney’s fees” for supposed violations of Chapter 541 of the Texas Insurance Code; supposed breach of contract; supposed violations of Chapter 542 of the Texas Insurance Code; and supposed breach of the common law duty of good faith and fair dealing. See *Plaintiff’s Original Petition* at ¶ 4, p. 2; ¶ 10, p. 2; ¶¶ 30-32, pp. 7-8; ¶¶ 33-38, pp. 8-9; ¶¶ 39-42, p. 9; ¶¶ 45-48, pp. 10-11; & ¶¶ 52-56, pp. 11-12, included

with the *Index of State Court Papers* attached as Exhibit A hereto, incorporated herein, and made a part hereof for all pertinent purposes.

BASIS FOR REMOVAL

5. Removal is proper pursuant to 28 U.S.C. § 1332 (2015) because there is complete diversity of citizenship between Plaintiffs on the one hand and State Farm Lloyds on the other. Further, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

Diversity of Citizenship

6. At the time of filing of the lawsuit in state court and at the time of filing of this Notice of Removal, Plaintiffs were and are citizens of the State of Texas. See *Plaintiffs' Original Petition* at ¶ 2, p. 1, included with the *Index of State Court Papers* attached as Exhibit A hereto, incorporated herein, and made a part hereof for all pertinent purposes.

7. At the time of filing of the lawsuit in state court and at the time of filing of this Notice of Removal, State Farm Lloyds was and is an unincorporated insurance association whose underwriters were and are all citizens of states other than Texas. Accordingly, State Farm Lloyds is not a citizen of the State of Texas for purposes of federal diversity jurisdiction. See, e.g., *Garza v. State Farm Lloyds*, 2013 WL 3439851, at *2 (S.D. Tex. July 8, 2013) (citizenship of State Farm Lloyds diverse from that of Texas plaintiffs); *Alonzo v. State Farm Lloyds*, 2006 WL 1677767, at *1 (W.D. Tex. June 12, 2006) (same); *Caballero v. State Farm Lloyds*, 2003 WL 23109217, at *1 (S.D. Tex. October 31, 2003) (same).

8. As such, complete diversity of citizenship exists in this action. That is, the citizenship of Plaintiffs is different than the citizenship of State Farm Lloyds. See *Lincoln Property Co. v. Roche*, 546 U.S. 81, 84 (2005) (diversity jurisdiction present when all parties on one side of action are citizens of different states from all parties on other side).

Amount in Controversy

9. Plaintiff's Original Petition expressly states that Plaintiff is claiming damages in excess of \$200,000. See *Plaintiff's Original Petition* at ¶ 4, p. 2, included with the *Index of State Court Papers* attached as Exhibit A hereto, incorporated herein, and made a part hereof for all pertinent purposes. It is therefore apparent that the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

THE REMOVAL IS PROCEDURALLY CORRECT

10. This Notice of Removal is filed by State Farm Lloyds within thirty (30) days after the date on which State Farm Lloyds was served with Plaintiffs' Original Petition and citation. See 28 U.S.C. § 1446(b) (2015). This Notice of Removal is also filed within one (1) year of commencement of Plaintiffs' lawsuit. See *id.*

11. As set forth in detail in this Notice of Removal, this Court has jurisdiction because there is complete diversity of citizenship between Plaintiffs on the one hand and State Farm Lloyds on the other. Also as set forth in detail in this Notice of Removal, the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

12. Venue is proper in this district under 28 U.S.C. § 1446(a) (2015) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to Plaintiffs' claim or claims allegedly happened in this district.

13. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibit A hereto is an *Index of State Court Papers* and copies of all process, pleadings, orders, and the docket sheet on file in the state court lawsuit. Additionally, attached as Exhibit B hereto is a *List of Parties and Counsel* relating to this action and attached as Exhibit C hereto is an *Index of Matters Being Filed* in this action. Each of the exhibits is incorporated herein and made a part hereof for all pertinent purposes.

14. Pursuant to 28 U.S.C. § 1446(d) (2015), promptly after the filing of this Notice of Removal, written notice thereof will be given to Plaintiffs, the adverse parties.

15. Pursuant to 28 U.S.C. § 1446(d) (2015), promptly after the filing of this Notice of Removal, a true and correct copy thereof will be filed with the Clerk of Court of the District Court for Webb County, Texas.

REQUEST FOR JURY TRIAL

16. The Original Petition recorded in the state court by Plaintiffs did not contain a jury demand. With the filing of this Notice of Removal, State Farm Lloyds respectfully requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

CONCLUSION

17. Based on the foregoing, State Farm Lloyds respectfully requests that this action be removed from the 406th Judicial District Court, Webb County, Texas, to the United States District Court for the Southern District of Texas, Laredo Division. State Farm Lloyds also respectfully asks that this Court enter such other and further orders as may be necessary or appropriate.

Respectfully submitted,

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By: /s/ Ray R. Ortiz
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**ATTORNEY-IN-CHARGE FOR STATE FARM
LLOYDS**

[Certificate of Service on following page]

CERTIFICATE OF SERVICE

On August 13, 2015, the foregoing document was served in compliance with the Federal Rules of Civil Procedure by mail, hand delivery, telecopier transmission, or CM/ECF electronic notice to the following:

Mr. Andres Alejandro Arguello
State Bar No. 24089970
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Houston, Texas 77058
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/s/ Ray R. Ortiz

Ray R. Ortiz

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